

**1. Requested Motion:**

**Meeting Date:** April 18, 2011

Approve the Services Agreement with Woodard & Curran, Inc. for Operations and Maintenance services of the potable water distribution system in the amount of \$454,612.00

**Why the action is necessary:**

Town Council must approve the placement of all large contracts.

**What the action accomplishes:**

This action puts into place a contract to ensure the proper operations and maintenance of the potable water distribution system.

**2. Agenda:**

☐ Consent  
☒ Administrative

**3. Requirement/Purpose:**

☐ Resolution  
☐ Ordinance  
☒ Other

**4. Submitter of Information:**

☐ Council  
☒ Town Staff – Public Works  
☐ Town Attorney

**5. Background:**

The operations and maintenance of the potable water distribution system was advertised for proposals in August, 2010 with the opening held on September 30, 2010, with three submittals received. The selection committee ranked the submittals and brought forward that ranking for PWSI Board of Directors direction. PWSI approved the ranking on December 6, 2010 and authorized staff to negotiate a contract with the top ranked firm. Staff has successfully negotiated contract in the amount of \$454,612.00 for the first year, retroactive to January 1, 2011 with all provisions of the RFP met. The contract will be effective for three years with the ability to extend for an additional three years. The Utility has the ability to negate the contract at any time. The contract does include a provision that an annual increase will be considered based on a local CPI, with approval by the Utility. A copy of the Service Provider Agreement is attached for reference. This contract price is an increase of \$75,326.93 or approximately 19.8% higher than the previous contract. The FY 11 budget was approved at \$425,000.00. However, the new contract is taking effect January 1, vs. October 1, the impact on the FY11 operating budget will be an increase of approximately \$11,000.00. If necessary, as the year progresses, staff will bring back a budget amendment request.



**6. Alternative Action:**

Do not approve the Agreement and provide alternative direction to staff regarding the same.

**7. Management Recommendations:**

Approve

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

**9. Council Action:**

☐ Approved ☐ Denied ☐ Deferred ☐ Other

## SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the Town of Fort Myers Beach Public Works Services Inc., 2523 Estero Boulevard, Fort Myers Beach, FL 33931, a Florida not for profit corporation (hereafter "PWSI"), and Woodward & Curran, Inc., with an address of 41 Hutchins Drive, Portland, ME 04102 (hereafter "Provider"), for the Provider to render the following services to PWSI – water utility meter reading, billing and collection, monitoring services and operations and maintenance of the system as further described in Exhibit "A".

1. Scope of Services. Provider shall perform the services and work as set forth in "Scope of Services" which is attached hereto as Exhibit "A" and made a part of this Agreement. Provider warrants and represents that it is qualified, willing and able to provide and perform all such services in accordance with the terms of this Agreement. The parties shall have the ability to change the Scope of Services by mutual written agreement, except that PWSI shall have the unilateral right to delete services hereunder for any reason without compensation to Provider other than for services already performed.
2. Term: This Agreement shall commence on January 1, 2011 and continue for a period of three (3) years, subject to PWSI's ability to terminate the Agreement as set forth elsewhere. This Agreement may be extended for up to three (3) additional one-year periods upon mutual agreement between both parties.
3. Payment Obligation: Total cost of all labor and materials not to exceed **\$454,612.00** for the first year. At the end of the initial year, and each year thereafter, through the contract term, Town and Provider shall negotiate an adjustment to the contract price based upon the percent increase/decrease in Consumer Price Index- All Urban Consumers (CPI-U) Southern Region

PWSI shall pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in Exhibit "B," which is attached hereto and made a part of this Agreement. The Provider's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to PWSI's payment obligation, the PWSI shall pay the undisputed amount, if any, within thirty (30) days.

4. Provider's Obligations. The Provider's obligations shall include, but are not limited to, the following:
  - a) Licensure. The Provider shall maintain all licenses and/or certifications required by any governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
  - b) Provision of Services. The Provider shall perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies which regulate or have jurisdiction over the services to be provided and/or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider shall designate one (1) person as the point of contact for PWSI regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and shall make all deductions required of employers by state, federal and local laws.

- c) Non-Waiver. Neither review, approval, nor acceptance by PWSI of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider, shall in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.
- d) Indemnity and Hold Harmless. The Provider shall be liable and agrees to be liable for, and shall indemnify, defend and hold PWSI and the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees (including but not limited to appellate attorney fees) arising out of the Provider's errors, omissions, willful misconduct and/or negligence. The Provider shall not be liable to, nor be required to indemnify PWSI or the Town for any portions of damages arising out of any error, omission, and/or negligence of PWSI, the Town of Fort Myers Beach, its employees, agents, or representatives.
- e) Non-Public Information. The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without PWSI's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider shall require all of its employees and subcontractor(s) to comply with the provisions of this paragraph.
- f) Statutory Duties. The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to PWSI hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
- g) Disclosure. The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. Commencement and Completion of Work. PWSI shall provide written notice to the Provider that it is authorized to commence work. The Provider thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and/or complete any of the services and work required hereunder in a timely and diligent manner, PWSI may consider such failure as justifiable cause to terminate this Agreement, in addition to any other remedies PWSI may have.
6. Insurance. The Provider shall have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "A". Each Certificate of Insurance shall include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of coverage; the designation of the Town of Fort Myers Beach and the Town of Fort Myers Beach Public Works Services Inc. as additional insured and as certificate holder, except as to Professional Liability Insurance and for Workers' Compensation Insurance. Should any of these policies be cancelled before the expiration date thereof, Provider shall instruct the issuing company to mail thirty (30) days written notice to PWSI prior to such cancellation.
7. Limitation of Liability. For acts that are covered by insurance, W & C's liability shall be limited to the coverage limits of said insurance whether such liability is at law or in equity

and whether it is based in tort, contract, warranty, strict liability or otherwise arising from this Agreement. Such limitation of liability shall not apply to any claims of Town for damages suffered as a result of W & C's fraud or willful misconduct. In no event shall W & C be liable, whether as a result of breach of contract or warranty, tort, strict liability or otherwise, for special, incidental, exemplary or consequential damages (other than death or bodily injury), including but not limited to loss of profits or revenue.

8. Inclusion of Additional Documents. Any request for bids and/or request for proposal and all exhibits, addendum, or other attachments thereto as issued by PWSI are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: Exhibit A, Scope of Services; Exhibit B, Payment Obligation; and Exhibit C, Vendor Proposal in response to Public Works Services Inc. Request for Proposals #RFP-10-08-PWU.
9. Criminal Background Investigations. The Provider shall be required to obtain and maintain criminal background investigations of all persons that will be employed, contracted or assigned by the Provider to provide services under the provisions of this Agreement.
10. Termination of Agreement. Either party may terminate this Agreement without cause upon thirty (30) calendar days' prior written notice to the other, in which case PWSI shall compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due. In addition, PWSI shall have the ability to terminate this Agreement at any time for cause.
11. Assignment, Transfer and Subcontracts. The Provider shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider shall have the right, subject to PWSI's prior written approval, to employ other persons and/or firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.
12. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of two (2) years from the date of termination of this Agreement, or for such period as required by law. PWSI and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as PWSI deems necessary during this Agreement and the next succeeding two (2) years.
13. References to PWSI. All references to "PWSI", "the Town" or "the Town of Fort Myers Beach" shall be deemed to include its employees, agents, and/or authorized representatives.
14. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement shall only be valid when made in writing and signed by both parties. In the event of any conflict between the requirements, provisions, and/or terms of this Agreement and any subsequent written modification hereto, the most recently executed document shall take precedence.
15. Miscellaneous Provisions.
  - a) Applicable Law. This Agreement shall be governed by the laws, rules and regulations of the State of Florida. The venue for any litigation arising out of this agreement shall be in Lee County, Florida.

b) Attorneys Fees: The prevailing party in any litigation arising out of the agreement is entitled to recover reasonable attorney's fees from the non-prevailing party.

c) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

d) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.

e) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.

f) Notices. All notices hereunder shall be in writing and shall be sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

TOWN OF FORT MYERS BEACH  
PUBLIC WORKS SERVICES INC.

ATTEST:

BY: \_\_\_\_\_  
Terrance Stewart, GENERAL MANAGER

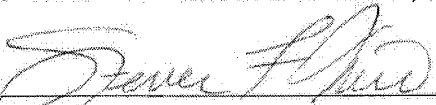
BY: \_\_\_\_\_  
Michelle Mayher, CORPORATE CLERK

APPROVED AS TO LEGAL FORM:

BY: \_\_\_\_\_  
Fowler, White, Boggs, CORPORATE ATTORNEY


Printed Name: \_\_\_\_\_

PROVIDER: WOODARD & CURRAN, INC.

BY:   
Signature

STEVEN F NIRO  
Printed name of person signing

SR. VICE PRESIDENT  
Title (printed)

  
Witness Signature

Annette R. Miller  
Printed name of witness

**EXHIBIT A – SCOPE OF SERVICES**

TO THE SERVICE PROVIDER CONTRACT DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011  
BETWEEN PWSI AND WOODARD & CURRAN, INC., PROVIDER

**1. SCOPE OF SERVICES**

The key elements of the services to be provided include industry best practices related to water utility management including operations and maintenance of the system, water utility meter reading services, bill preparation and bill collection services typical of residential and commercial water users, and monitoring services. Specific services to be provided include, but are not limited to the following:

- a. Maintain an independent office within the corporate limits of the Town of Fort Myers Beach that shall be open during regular business hours at a minimum of eight (8) hours per day, Monday through Friday;
- b. Perform all monthly meter reading, billing and financial accounting activities;
- c. Provision of invoice and remittance collection services;
- d. Prepare and submit monthly utility financial transactions;
- e. Resolve issues with customers concerning: billing, high water consumption, field repairs, low pressure, odors, or other water quality complaints;
- f. Perform service connects and disconnects; and repair or replace water meters, boxes, and box covers as necessary;
- g. Perform or facilitate the proper repair of all breaks and leaks within the system;
- h. Perform and document distribution system chlorine residuals and master meter reads five (5) days per week;
- i. Properly collect and process all regulatory sampling; create, submit, and maintain all regulatory sampling, and monitoring reports as required by EPA, the Florida DEP, and Lee County Health administrative statutes;
- j. Develop and mail an annual Consumer Confidence Report (CCR) to all water system consumers;
- k. Develop and implement a fire hydrant flushing program in accordance with Florida DEP and Lee County Health Department requirements.
- l. Perform routine maintenance of fire hydrants, storage system high service pumps, on-line Chlorine Residual analyzers, and pump emergency generator systems;
- m. Schedule large meter annual calibrations, testing, and documentation records;
- n. Document all maintenance activities through a formal work order system;
- o. Develop, implement, and document a valve maintenance program that includes, but is not limited to valve exercising, and the maintenance of the valve data within the Town's GIS mapping and maintenance system;
- p. Provide and maintain all "as-built" information within the system for any and all additions, deletions and changes which will also include GIS updates for meters, hydrants, and any other physical equipment within the system;
- q. Develop and implement a cross-connection control program for all system backflow devices;
- r. Order water utility parts and maintain a parts inventory for PWSI;
- s. Prepare requests for utility work bids;
- t. Review construction plans for new connections consistent with operational standards; coordinate with Town and/or County staff when developing impact and connection fees associated with new construction;
- u. Coordinate water system work activities with subcontractors;
- v. Perform water system locates;
- w. Review and issue invoices for utility damage or work performed on systems;
- x. Witness hot taps and pressure tests on distribution lines;

- y. Work with Lee County and State of Florida Agencies on impact fees, water quality issues, fire hydrant management, and routine sampling requirements; and
- z. Maintain at all times and keep up to date an Emergency Operations Plan for the water utility system and required training consistent with the National Incident Management System.

Respondents must be prepared to provide on-call response 24 hours per day, 365 days per year. Respondents must also be able to respond to an after hours service call-out within thirty (30 minutes) of being contacted. Successful Respondent shall work closely with the Town and PWSI and be available prior to, during, and after emergency situations. The water utility system operator is an integral component in the Town's Emergency Operations Structure and will be relied upon to provide assistance with damage assessment and repairs associated with an emergency event.

**2. PROVIDER'S OBLIGATIONS:**

The Provider shall perform the following services under this Agreement:

- Water Distribution System
- Repair and Maintenance
- Facility Operations and Monitoring
- Water Meter Services
- Meter Reading, Custom billing, and Collection
- Customer Service
- Performance Reporting
- Regulatory Sampling and Reporting
- Emergency Services Planning and Training

**3. PWSI'S OBLIGATIONS:**

- Designate a representative to oversee work performed by the Provider under this Agreement
- Provide access to the System and provide use of existing System equipment necessary for the operations and maintenance for the Provider, its agents and employees
- Purchase and maintain, at its sole expense, property and structure liability insurance and flood and fire insurance policies, including extended coverage, plus coverage for vandalism and malicious mischief for the full and insurable value of the System, and insurance for bodily injury or death to PWSI's employees, agents or invitees
- Provide necessary licensing for GIS software utilized by PWSI and the Town of Fort Myers Beach
- Give prompt written notice to the Provider whenever PWSI observes or otherwise becomes aware of any development that affects the scope or timing of the Providers services or any failure of the Provider to perform in accordance with the terms and conditions of this Agreement
- Use best efforts to compensate the Provider in a timely was as provided in Exhibit B, Payment Obligation

**4. INSURANCE:** The Provider shall obtain and maintain the following insurance coverages:

- a) Workers Compensation Coverage to comply for all employees for Statutory Limits in compliance with the applicable State and Federal laws;

- b) Employer's Liability Insurance with a minimum limit per accident in accordance with statutory requirements;
- c) Commercial General Liability Insurance including contractual liability insurance with minimum limits of \$3,000,000 per occurrence and \$3,000,000 aggregate for Bodily Injury Liability and a minimum limit of \$3,000,000 for Property Damage Liability, or a minimum combined single limit of \$3,000,000.
- d) Comprehensive automobile liability Insurance with minimum limits of \$3,000,000 per person and \$3,000,000 per accident for Bodily Injury Liability and a minimum limit of \$3,000,000 for Property Damage Liability, or a minimum combined single limit of \$3,000,000, with coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership.
- e) Business Interruption Insurance;
- f) Umbrella/Excess Liability in the amount of \$10,000,000 for each occurrence and aggregate.



**EXHIBIT B – PAYMENT OBLIGATION**

TO THE SERVICE PROVIDER CONTRACT DATED THIS \_\_\_\_<sup>th</sup> DAY OF \_\_\_\_\_,  
2011 BETWEEN PWSI AND WOODARD & CURRAN, INC., PROVIDER.

PAYMENT OBLIGATION

1. Payment terms are as follows:
  - a. Total cost of all labor and materials not to exceed \$454,612.00 for the first year.
  - b. At the end of the initial year, and each year thereafter, through the contract term, Town and Provider shall negotiate an adjustment to the contract price based upon the percent increase/decrease in Consumer Price Index- All Urban Consumers (CPI-U) Southern Region
  - c. Work to be inspected and approved by the Town prior to issuing payment.
  - d. Invoice to be submitted by Provider to Town at the beginning of the month for which services are to be rendered.
  - e. Payment will be made by Town within 30 days of receipt of invoice from Provider.

**EXHIBIT C – VENDOR PROPOSAL**

[Insert Vendor Proposal]